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CONSULAR PROTECTION OF U.S. NATIONALS ABROAD

1 FAM 010

INTRODUCTION

(CT:CON-106; 06-06-2005)
(Office of Origin: CA/OCS/PRI)

7 FAM 011 SUMMARY

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- a. The U.S. Department of State and our embassies and consulates abroad have no greater responsibility than the protection of U.S. citizens overseas. Article 5 of the Vienna Convention on Consular Relations (VCCR) provides that consular functions include.

- b. **Bureau of Consular Affairs:** Primary responsibility for protection of U.S. citizens abroad is carried out by the Bureau of Consular Affairs (CA) in the Department of State and by dedicated consular officers, locally engaged staff and consular agents abroad. 1 FAM 250 outlines the duties and responsibilities of the Bureau of Consular Affairs. It is imperative that consular officers participate fully in post Emergency Action Committees (EAC) to ensure that the interests of private U.S. citizens traveling and residing abroad are considered in post strategic planning and decision-making. See 12 FAH-1 H-112 Emergency Action Committee.
- c. **Overseas Citizens Services:** Within CA, the Directorate of Overseas Citizens Services (CA/OCS) is charged with exercising the Secretary of State's responsibility to provide consular protection and services to United States citizens abroad. OCS serves as a liaison between concerned family members, friends and members of Congress in the U.S. and consular posts and U.S. citizens abroad. OCS is responsible for the ongoing development, delivery and oversight of a broad range of highly technical and complex programs and services requiring an in-depth knowledge of the laws, regulations, treaties, conventions and precedents governing those programs. CA/OCS is comprised of three offices: American Citizen

Services and Crisis Management (ACS), Children's Issues (CI) and Policy Review and Interagency Liaison (PRI). These offices are under the leadership of a Managing Director and the Deputy Assistant Secretary for Overseas Citizens Services.

- d. The **Office of American Citizens Services and Crisis Management** (CA/OCS/ACS) is in effect the Department's "America Desk." ACS helps U.S. citizens/nationals abroad and their families and friends at home with emergencies such as deaths, arrests, illnesses and injuries. ACS provides vital assistance to U.S. citizens/nationals during periods of crisis such as transportation accidents, natural disasters, and civil unrest, including the evacuation of U.S. citizens. In addition to ACS's emergency and crisis work, it provides assistance on a wide variety of other issues, including estates, property, voting and adjudicating acquisition and loss of U.S. citizenship.
- e. The **Office of Children's Issues (CA/OCS/CI)** provides assistance to the public on international parental child abduction and international adoption cases. CI serves as the U.S. Central Authority for the Hague Convention on the Civil Aspects of International Child Abduction (Hague Abduction Convention) and will do the same for the Hague Convention on the Protection of Children and Cooperation in Respect of International Adoption. CI also formulates and coordinates policy and provides direction to posts on international parental child abduction cases and international adoption policy issues.
- f. The **Office of Policy Review and Inter-Agency Liaison** (CA/OCS/PRI) participates in formulating policies relating to emergency and non-emergency services to U.S. citizens residing or traveling abroad and to interested parties in the United States. PRI provides legal and technical guidance relating to OCS programs carried out by all OCS personnel and by consular officers worldwide. PRI's primary responsibilities, stated briefly, include policy formulation, program analysis and planning, litigation, legislation, regulations, treaties, advisory opinions involving complex legal analysis, liaison with other agencies and private-sector counterparts. Posts can contact PRI at ASKPRI@state.gov.

7 FAM 012 ELIGIBILITY

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- a. **U.S. Nationals Eligible for Consular Protection and Other Services:** Nationality is the principal relationship that connects an individual to a State. International law recognizes the right of a State to afford diplomatic and consular protection to its nationals and to represent their interests. Under U.S. law the term "national" is inclusive of citizens but "citizen" is not inclusive of nationals. All U.S. citizens are U.S. nationals. Section 101(a)(22) INA (8 U.S.C. 1101(a)(22)) provides that the term "national of the United States" means (A) a citizen of the United States, or (B) a person who, though not a citizen of the United States, owes permanent allegiance to the United States. U.S. nationals are eligible for U.S. consular protection.
- b. **U.S. Non-Citizen Nationals:** A non-citizen national of the United States is a person who, though not a citizen, owes permanent allegiance to the United States. Section 308(1) INA (8 U.S.C. 1408(1)) provides that the term "U.S. Noncitizen nationals" includes **only** people born in an outlying possession of the United States on or after the date of formal acquisition of such possession. Section 101(a)(29) INA (8 U.S.C. 1101(a)(29)) defines the term "outlying possessions of the United States" to mean American Samoa and the Swains. Some statutes and treaties, such as Section 302 of the Covenant to Establish a Commonwealth of the Northern Mariana Islands (48 U.S.C. 1801, 48 U.S.C. 1801 Notes), have specified means by which persons who automatically acquired U.S. citizenship could instead opt to be noncitizen nationals. See 7 FAM 1100, Acquisition and Retention of U.S. Citizenship and Nationality, specifically: 7 FAM 1121.4 Laws Governing Status of Persons Born in Outlying Possessions; 7 FAM 1125 American Samoa and the Swains Islands and 7 FAM 1126 Commonwealth of the Northern Mariana islands
- c. **Lawful permanent resident aliens:** Section 101(a)(20) INA (8 U.S.C. 1101(a)(20)) defines the term "lawfully admitted for permanent residence" as the status of having been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws, whose status has not changed. Lawful permanent resident aliens (LPRs) generally **are not** entitled to emergency and protective services provided by the U.S. Government. Refer such persons to the nearest diplomatic representative of the country of which they are a national or citizen. When an LPR applicant has exceptionally close and strong ties to the United States, and overriding humanitarian and compassionate grounds exist, request guidance from CA/OCS/ACS about the propriety of providing the service, with the understanding that the host government may not, and is not

obligated to, honor a request from the U.S. Government on behalf of such an individual. The Privacy Act (5 U.S.C. 552a) does pertain to LPRs. See also 7 FAM 060.

- d. **No Ties to the United States:** Persons with no ties or allegiance to the United States may not be provided emergency or protective services except under the most extraordinary circumstances, and then only with the prior approval of the Department (CA/OCS).
- e. **Availability of Certain ACS Consular Services to Foreign Nationals:** Notarial and Authentication services are available to foreign nationals under certain circumstances. See 7 FAM 800.

7 FAM 013 DIPLOMATIC AND CONSULAR PREMISES

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The status of diplomatic and consular premises arises from the rules of law relating to immunity from the prescriptive and enforcement jurisdiction of the receiving State; the premises are **not** part of the territory of the sending State (the United States of America). Therefore, **contrary to popular belief, a U.S. embassy or consulate is not U.S. soil.** See 7 FAM 180, Refuge – Temporary Emergency Protection Of Private U.S. Nationals At Overseas Posts.

7 FAM 014 CONSULAR FUNCTIONS AND LEGAL AUTHORITIES

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The following chart summarizes the legal authorities for various consular functions and who may perform them.

Function	Authority	Who May Perform
Consular Protection Article 5(a), (e), (h), and (i), VCCR	22 CFR 71.1	Foreign Service Officers Note: Article 17 of the VCCR provides for the performance of diplomatic acts by consular officers under certain circumstances. Nothing in the VCCR that I found provides for the performance of consular acts by diplomatic officers. Article 3, para 2 of the

		Vienna Convention on Diplomatic Relations (VCDR) provides “Nothing in the present Convention shall be construed as preventing the performance of consular functions by a diplomatic mission.”
Issuance of Passports to U.S. Nationals Article 5(d), VCCR (7 FAM 1300)	22 U.S.C. 211a 22 CFR 50.1(g) 22 CFR 51.21(6)	Diplomatic or Consular Officer, Overseas Nationality Examiner (U.S. Citizen State Dept Employees designated by the OCS DAS) NOTE: Passport applications may be executed before a Consular Agent or Notarial Officer, but Consular Agents and Notarial Officers may not adjudicate passport applications or issue passports.
Issuance of Visas Article 5(d) VCCR	8 U.S.C. 1101 et seq 22 CFR 40 (Visas Generally) 22 CFR 41 (Nonimmigrant Visas), 22 CFR 42 and 45 (Immigrant visas)	See 9 FAM.
Visas and International Child Abduction	INA 212(a)(10)(C)(ii)	In international child abduction cases, authority to determine that an alien intentionally assisted a child abductor and to designate alien family members and agents of child abductors, thereby, making such aliens ineligible for visas/inadmissible.
Notarials; Depositions; Letters Rogatory	22 U.S.C. 4215 22 U.S.C. 4221	Consular Officer; Secretary Of Embassy Or Legation; U.S. Citizen State Dept Employees designated by the OCS DAS

Rogatory Article 5(f) and (j), VCCR (7 FAM 800, 7 FAM 900)	22 CFR 92.1(d)	designated by the OCS DAS
Extradition Documents (7 FAM 1633)	18 U.S.C. 3190 22 CFR 92.40	U.S. Ambassador; Chargé d’Affaires; Consul General (Principal Consular Officer)
Reports of Birth (7 FAM 1400)	22 U.S.C. 2705 22 CFR 50.5 22 CFR 50.6	Consular Officer or Designated Nationality Examiner Passport agents in time of war or national emergency
Reports of Death (7 FAM 200)	22 U.S.C. 2715b	Consular Officer
Notification of Death (7 FAM 200)	22 U.S.C. 4196 22 CFR 72.1	Consular or Diplomatic Officer Designated U.S. Citizen State Dept employees
Estates Article 5(g), VCCR (7 FAM 200)	22 U.S.C. 2715c; 22 U.S.C. 4196 22 U.S.C. 4197 22 CFR 72.16	Consular or Diplomatic Officer Designated U.S. Citizen State Dept employees Note: Article 17 of the VCCR provides for the performance of diplomatic acts by consular officers under certain circumstances. Nothing in the VCCR that I found provides for the performance of consular acts by diplomatic officers. Article 3, para 2 of the VCDR provides “Nothing in the present Convention shall be construed as preventing the performance of consular functions by a diplomatic mission.”

7 FAM 015 NOTE ABOUT DIPLOMATIC AND CONSULAR TERMINOLOGY

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In the Vienna Convention on Consular Relations (VCCR) and bilateral consular conventions, the country that sent the consular officer to serve abroad is referred to as the “**sending State**.” The “**receiving State**” is the country where that consular officer will serve (the host country). You should become accustomed to this way of referring to countries in your formal dialogue with the authorities of the country where you serve abroad. Of course, diplomatic parlance is not useful or necessary when speaking informally at the working level.

7 FAM 016 THROUGH 019 UNASSIGNED